

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.538 OF 2006
WITH
CIVIL APPLICATION NO. 693 OF 2006

Chandu Tulsidas Pahuja. ..Appellant.

V/s.

Municipal Corporation of Gr.Bombay. ..Respondent.

Mr.P.N.Kulkarni for appellant.

Mrs.Geeta Joglekar for respondent.

CORAM: A.M.KHANWILKAR, J

DATE : JULY 27, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mrs.Joglekar waives notice for respondent-corporation. As short question is involved, appeal is taken up for final disposal forthwith by consent.

4. This appeal takes exception to the Judgment and Order passed by the trial Court refusing to grant ad-interim order, as prayed during the pendency of the Notice of Motion dated 17th July, 2006 in L.C.Suit No.3214 of 2006. The grievance of the

appellant/plaintiff is that the officers of the Corporation were likely to demolish the structure in question without following due process of law. It is in this backdrop, suit has been filed by the appellant/plaintiff in the City Civil Court being L.C.No.3214 of 2006 seeking relief against the respondent-Corporation not to demolish and/or remove and/or pull down the suit structure without following due process of law. The Court below has declined to grant ad-interim relief on the reasoning that the suit structure is standing on the road and is not a protected structure. Indeed, that finding cannot be disturbed in this appeal as from the photographs which are produced across the bar, that position is reinforced. The question however, that was required to be addressed by the trial Court is whether the Corporation can demolish the suit structure without following due process of law. The answer has to be in the negative.

5. Counsel for the Corporation however, seeks to rely on the direction given by the Division Bench of this Court dated 21st June, 2006 in Notice of Motion No.27 of 2006 in PIL W.P. No.2063 of 2002 calling upon the official of the Corporation to take immediate steps for demolition of the illegal shrines

and unauthorised religious structures and take further steps for ensuring that at such place illegal shrines are not constructed. There can be no difficulty in accepting the stand of the Corporation that officials of the Corporation will have to give effect to the direction of the Division Bench referred to above. Nevertheless, the officer of the Corporation can proceed to take appropriate action only after following due process of law. Thus understood, this appeal should succeed.

6. It is accordingly, made clear that officials of the Corporation can proceed to take action in respect of the suit structure by following due process of law. This is the limited ad-interim protection granted to the appellant, as prayed. In fact, if due process of law is to be observed by the Corporation, nothing will survive in the suit which has been filed by the appellant before the lower Court and the entire suit will be worked out.

. Counsel for the Corporation submits that the Corporation will follow due process of law with regard to the suit structure, if already not followed in the past. If the Corporation had already followed due process of law, that would have been the foremost

objection taken by the Corporation to oppose prayer for ad-interim relief. That is not the objection, which has been taken in the present appeal. Be that as it may, if the Corporation were to follow due process of law before taking coercive action in respect of the suit structure, nothing will survive in the suit pending before the lower Court and parties can move the lower Court for formal disposal of the suit on the said basis. All questions on merits are left open.

7. Appeal as well as civil application disposed of on the above terms.